IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.247/2000

1. Gajanan Salgaokar,
2. Chandrakant Chodankar,
3. Dilip Govekar,
4. Shankar Kerkar,
5. Pandurang Matkar,
6. Yeshwant Kandolkar,
7. Krishna Korgaokar,
8. Suresh Savordekar,
9. Vallabh Karpe,
10. Arjun Shirodkar,
11. Gokukldas Salgaokar,
12. Ankush Govekar,
13. Manohar Simepuruskar,
14. Sudesh Shirodkar,
15. Gurudas Parulekar,
16. Sanjay Divkar,
17. Nilesh Govekar,
18. Umesh Divkar,
19. Rohidas Haldankar,
20. Santosh Gadekar,
21. Keshav Asvekar,
22. Sandip Kalangutkar,
23. Laximan Shirodkar,
24. Babuli Kandolkar,
All residing at Calangute
Village, Bardez, Goa. .... Petitioners.

Vs.

1. Anant Narayan Shet Verekar,
son of late Narayan Xet Verekar
Calangute Bardez, Goa through
his attorney Mr. Datta Damodar
Kakule, major, married, business-
man, resident of Calangute,
Bardez, Goa.

2. Eknath V. Nagvekar,

3. Mohan Shirodkar,

4. Prashant Nagvekar,

5. Vishnu Simepuruskar,

All residing at Calangute,
Bardez, Goa. ..... Respondents.

Mr. V.P. Thali, Advocate for the petitioners.

Mr. M.S. Usgaonkar, Sr. Advocate with Ms. Swati Wagh Kamat, Advocate for respondent No.1.

CORAM : F.I. REBELLO, J.

DATE : JULY 17, 2003.

ORAL JUDGMENT :

Consent terms came to be filed in Regular Civil Suit No.256/1985. Clause 4 of the consent terms, reads as under :

> "The plaintiffs and the defendants hereto shall jointly take steps to constitution of Mazania under the Mazania Regulation, for which the following committees constituted: ... "

In the suit, the present petitioner No.10 was defendant No.4. An application for execution thereafter came to be filed by the Decree-holders against the Judgment-debtors. That came to be disposed of by order dated 15.4.1999 with the direction that the Decree-holders and the Judgment-Debtors shall approach the learned Mamaltdar within 15 days from the date of order for constitution of Mazania under the Mazania Regulation. There is a further direction that the learned Mamlatdar shall direct the Committee to take

appropriate steps for constitution of Mazania so as to comply the compromise decree dated 17.4.86 scrupulously. It transpires that an application thereafter came to be moved by the Decree-holders being Civil Misc. Application No.208/2000 in Execution Application No.8/97/SR, wherein the reliefs, amongst others, was to restrain the 28 persons from using the name of Xri Shantadurga Saunsthan or Xri (Shree) Shantadurga Mandir in letter heads or in correspondence with any person or authority or for any purpose and other consequential reliefs to the same effect which were from holding meeting of Mahazans on 24.9.2000, as published in the daily "Gomantak" dated 11.9.2000 and holding any meeting amongst themselves or with the public in connection with the constitution of Mazania of Xri Shantadurga Mandir of Calangute. A further relief was sought that they may be restrained from interfering in any manner with the work of committee appointed by the Court for the purpose of constitution of Mazania under the Mazania Regulations. It was also prayed therein that notices may be issued to the said twenty eight persons directing them to show cause why action should not be taken against them to initiate contempt proceedings.

An order came to be passed on 22.9.2000 whereby certain directions were issued against the 28 persons who are the present petitioners before this Court. It

is that order which is subject matter of the present revision application.

2. It is contended on behalf of the petitioners that the trial Court has jurisdiction to consider the said application which are proceedings and if this Court allows the revision application, that would conclude the proceedings and consequently, Section 115 of the C.P.C. would be attracted. On the other hand, on behalf of the respondents, it is contended that amongst others, petitioner No.10 is not co-operating in constituting the Mazania and, in these circumstances, the learned trial Court was within its jurisdiction in granting the reliefs as prayed for.

3. In the consent terms, as may be noted, a Committee was constituted, which consisted (1) Shri Sharadchandra N. Shet Verekar, (2) Shri Haridas Narvenkar, (3) Shri Datta Damodar Kacule, (4) Shri Narayan Natekar, (5) Shri Eknath Vithal Nagvenkar, (6) Shri Babasaheb Dessai and (7) Shri Datta Shiva Kerkar. It is, therefore, clear that a Committee has been constituted for settling the bye-laws. In the Execution Proceedings, there is an order directing the Decree-holders and the Judgement-debtors to approach the learned Mamlatdar within 15 days from the date of the said order for constitution of the Mazania under the

Mazania Regulation. It is an admitted position that till today bye-laws have not been framed.

4. In that context of the matter, the question is whether it was open to the Executing Court which had already disposed of the application for execution, to entrain the application for the reliefs as prayed for. The relief as sought for, in my opinion, is totally independent of the Decree which was passed. The essential part of the consent decree was to constitute the bye-laws. If that be the case, clearly the trial Court has erred in exercising the jurisdiction to injunct the twenty eight persons from using the name of Xri Shantadurga or from granting the reliefs prayed for. The Decree-holders can pursue any remedy that they may have for getting the consent terms executed or any other appropriate proceedings. There was, however, no jurisdiction in the executing Court in granting the relief as prayed for. In the light of that, the impugned order is set aside. Revision Application is allowed and disposed of accordingly. There shall be no order as to costs.

F.I. REBELLO, J.

ssm.